

SERVICE DATE - AUGUST 22, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 384X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY –  
ABANDONMENT EXEMPTION--IN MINNEHAHA COUNTY, SD

Decided: August 17, 2000

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 2.98-mile line of its railroad between milepost 147.15 and milepost 150.13 near Sioux Falls, in Minnehaha County, SD. Notice of the exemption was served and published in the Federal Register on August 11, 1999 (64 FR 43813-14). That notice stated that, if consummation has not been effected by BNSF's filing of a notice of consummation by August 11, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

By decision served September 9, 1999, the exemption was made subject to the conditions that BNSF: (a) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station marker identified by NGS that might be affected by the abandonment; and (b) retain its interest in and take no steps to alter the historic integrity of the line in its entirety until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed.

On August 11, 2000, BNSF filed a request to extend the time to consummate the abandonment and to file its notice of consummation.<sup>1</sup> BNSF states that, due to the pending historical condition, additional time is needed.<sup>2</sup>

The historical condition imposed in the decision served September 9, 1999, is a regulatory barrier to consummation and, therefore, BNSF cannot consummate the abandonment

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<sup>1</sup> Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

<sup>2</sup> On March 15, 2000, BNSF filed a letter stating that it and the South Dakota State Historic Preservation Officer have been in active negotiations to develop and execute a Memorandum of Agreement (MOA) and submitted a draft to the Board's Section of Environmental Analysis (SEA) for its review and approval. On March 30, 2000, the Chief of SEA signed and accepted the MOA.

until the section 106 process has been completed. Where, as here, there is a legal or regulatory barrier to consummation that exists at the end of the 1-year time period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal regulatory barrier. See 49 CFR 1152.29(e)(2). Therefore, BNSF may not yet consummate the abandonment and its extension request is unnecessary at this time.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF's request for an extension of time to exercise the abandonment authority is moot.
2. BNSF's filing will be placed in the public docket.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary